RAFEAH BINTI AHMAD (THE REPRESENTATIVE OF HJ HASSAN BIN HJ ARSHAD, DECEASED)

v.

BANK BUMIPUTRA MALAYSIA BERHAD

HIGH COURT MALAYA, JOHOR BAHRU
DATO' MOHD. GHAZALI BIN MOHD. YUSOFF JC
[CIVIL SUIT NO. 22-280-1990]
23 MARCH 1995

***LAND LAW**: Deceased holder of power of attorney charging land to bank - Whether power of attorney contained the power to charge land - Whether deceased had ostensible or implied authority to charge the land - Whether extraneous documents can be taken into account in construing the power - Land charged for the benefit of a development company - Whether there was a breach of s. 212 National Land Code - Deceased's representative applying for declaration that charges created over the land null and void, illegal and of no effect.*

***POWER OF ATTORNEY**: Deceased holder of power of attorney - Power of attorney giving deceased rights to dispose of land - Deceased charging land to bank in return for loan given to development company - Bank attempting to foreclose on default by borrower - Application for declaration that deceased not authorised to charge land - Courts policy in construing powers of attorney with regards to powers to borrow - Whether powers of attorney to be construed restrictively - Whether deceased had ostensible or implied authority to charge land - Whether extraneous documents can be considered in construing limits of authority in powers of attorney.*

The deceased was the holder of a power of attorney in respect of lands owned by himself and three other persons. The power of attorney, *inter alia*, permitted the deceased to dispose of the said lands. The deceased subsequently entered into a joint venture agreement with a development company (the company) to develop the said lands into a housing estate. In this regard the deceased charged the said lands to the defendant bank to enable the company to obtain a loan. The company was subsequently wound up and the bank sought to foreclose on the said lands.

The deceased's representative (the plaintiff) sought a declaration that the charges created over the said lands were null and void, illegal and of no effect on the grounds that the power of attorney did not give the deceased the right to charge the said lands. The plaintiff further contended that in any event the charges were illegal for being in breach of s. 212 of the National Land Code 1965 (NLC 1965).

The defendant denied that the creation of the charges were bad in law and sought to rely on the terms of the joint venture agreement to show that the deceased had ostensible or implied authority to charge the lands.

Both parties agreed to have the matter disposed off under the provisions of O. 33 r. 5 of the Rules of the High Court 1980 and in the circumstances the only issue before the Court was whether the deceased was legally empowered under the power of attorney to create legally binding charges under the NLC 1965.

Held:

[1] The power given to the deceased by clause 2 of the power of attorney does not at all include the power to "charge". Creation of a charge clearly cannot amount to a transfer of any portion of the chargor's interest in a piece of land. The words "transfer" and "assurance" in the power of attorney are only restricted to the transferring or conveying of the said lands or the rights in the said lands and nothing more. Nowhere is it expressly stated in the said power of attorney that the deceased can charge the said lands or even create third party charges over the said lands or use it as security for the payment of a debt or performance of an obligation. In the circumstances, clause 2 did not confer a general power of borrowing by using the said lands as security.

[2] A power of attorney given for limited purposes has always been strictly interpreted by the Courts. The Courts tend to lean against interpreting a clause as allowing the attorney to borrow and give security from the donor's property and if the donor wishes the attorney to have this power, it should be expressly stated.

[3] All powers of the donee have to be found within the four corners of the power of attorney and nothing more can be permitted by another document with another party, namely the joint venture agreement, which is totally extraneous to the power of attorney. If further or other powers are desired to be conferred, a new power of attorney should have been created.

[4] Although s. 210 of the NLC 1965 provides that a person acting under a valid power of attorney may execute an instrument effecting any dealing, this must be read together with s. 212 of the NLC 1965 which does not allow such instrument to be registered if it is in respect of more lands than one unless the dealings in question are all of the like nature and are all effected by the same person in favour of the same person. In the present case, as the deceased sought to create third party charges by charging the said lands for the benefit of the company, this clearly contravened the provisions of s. 212 of the NLC 1965.

[5] In the circumstances the deceased was not legally empowered to create legally binding charges under the National Land Code and the charges created by the deceased by virtue of these alleged powers in the power of attorney are null and void and of no effect.

[Plaintiff's application for declarations granted].

Cases referred to:
Bryant, Powis and Bryant Ltd. v. La Banque du Peuple [1893] AC 170 ***(refd)***
Jacobs v. Morris [1902] 1 Ch 816 ***(refd)***
In re Dowson and Jenkins' Contract [1904] 2 Ch 219 ***(refd)***
Subramania Pillay v. Sundarammal [1968] 2 MLJ 116 ***(refd)***

Legislation referred to:
National Land Code, ss. 5, 210, 212, 292 & 340
Rules of the High Court, O. 15 r. 16, O. 33 r. 5

Other sources referred to:
Dictionary of English Law, Jowitt, 2nd Edn.
Concise Law Dictionary, Osborn, 7th Edn.
The National Land Code - A Commentary, Judith E. Sihombing, p. 293
Powers of Attorney, Trevor Aldridge, 6th Edn. p. 15
Powers of Attorney in Australia and New Zealand, Berna Collier & Shannon Lindsay, 1992, p. 48

For the appellant - S. Balarajah; M/s. Balarajah & Co.
For the company - Mohd. Yamin bin Hj. Ismail; M/s. Mohd. Yamin Ismail & Partners.

JUDGMENT

Mohd. Ghazali bin Mohd. Yusoff JC:

This is an application by the plaintiff made by way of summons-in-chambers for a declaration that the charges purportedly created over 29 pieces of land is null and void, illegal and of no effect. The plaintiff had earlier filed a writ against the defendant on 13 December 1990 and has claimed the same relief in her statement of claim.

The facts of the case are as follows:

The plaintiff is the widow and personal representative of one Hj Hassan Hj Arshad, who died on 26 November 1985 intestate (hereafter referred to as "the deceased") and the defendant is Bank Bumiputra Malaysia Berhad, Batu Pahat Johore.

Prior to his death the deceased was the registered proprietor of 2 adjoining pieces of land situated in the mukim of Perserai in the state of Johor. The deceased was also the registered co-proprietor with three other persons, namely, Ibrahim bin Abdul Karim, Abd Hamid bin Busu and Shadan bin Mohd. Rahim (hereinafter referred to as "the said three persons"), in equal shares, in 21 adjoining pieces of land and each of the said three persons were also the registered proprietors of 2 other adjoining pieces of land each. All in all, the above said pieces of land totalled 29 pieces and are all situated in the same mukim (hereinafter referred to as "the said lands").

On 11 April 1981 the said three persons executed a power of attorney nominating and appointing the deceased "to be our Attorney for us and in our names or otherwise to do all or any of the following things within Malaysia in respect of the properties as described on schedule below", that is the said lands, which incidentally included the two pieces of land over which the deceased was the sole registered proprietor. The said power of attorney was witnessed by a solicitor and was duly deposited in the High Court in Muar on 4 May 1981.

Clauses 1 and 2 of the said power of attorney which are relevant for the purpose of this action reads:

1. And whereas for the better and more effective completion of the presence we are desirous of appointing an Attorney in respect of the Twenty-Nine (29) pieces of land as described in the Schedule annexed hereto to do all or any part of the acts or things hereinafter mentioned on his Attorney.

2. To give, sign and execute a proper transfer or other formal assurance of the Twenty-Nine (29) pieces of land as described in the schedule annexed hereto in the name of all of us as the Vendors or transferors to the Purchasers as Transferees or to any of the Purchasers' Nominee or Nominees and to register or cause to be registered such transfer or other formal assurance in the Office of the Commissioner of Lands and Mines, Johore Bahru or the Collector of Land Revenue, Batu Pahat Johore.

On 13 September 1982 the deceased for and on behalf of himself and the said three persons entered into a joint-venture agreement with a company called Za & Za's Bina Sdn. Bhd. (hereafter referred to as "the company") to develop the said lands into a housing estate. The company applied to the defendant for financial assistance to develop the said lands and as the deceased was the holder of the power of attorney, the company requested the deceased to execute third party charges over the said lands.

Consequently, two legal charges were executed by the deceased in favour of the defendant which created third party charges for the benefit of the said company, dated 23 May 1983 and 17 January 1984 respectively, as consideration for loans extended by the defendant to the company; the relevant charge documents were prepared by the defendant's solicitors.

Unfortunately, the housing estate did not materialise and the company was subsequently wound up by the High Court in Kuala Lumpur in 1987.

On 13 December 1990 the plaintiff, as representative of the deceased, filed this action by way of writ of summons, contending that the said power of attorney:

(a) did not empower the deceased to create a legal charge against the various titles;

(b) that the purported charges created are third party charges by which the deceased sought to create to secure the loans to the company; and

(c) that the charges are illegal by virtue of s. 212 of the National Land Code which do not allow dealings with respect to more lands than one unless the dealings in question are all of the like nature and are all effected by the same person or body in favour of the same person or body; since the said lands belong to several persons, no legal charges or dealings can be created.

The plaintiff also contended that as personal representative of the deceased, she would be adversely affected by any action on the part of the defendant to enforce its rights under the purported charges and as such is seeking a declaration that the charges purportedly created are null and void, illegal and of no effect. On 20 December 1990 on the application of the plaintiff the High Court granted an injunction preventing the defendant from foreclosing the said lands until the outcome of this suit.

In its statement of defence, which was only filed on 28 April 1991 after appearance was entered on 3 January 1991, the defendant denied that the charges created were bad in law and denied any knowledge that it was aware that the deceased's power under the power of attorney was limited and that it did not include the power to charge the said lands.

On 29 April 1991 the plaintiff filed an application by way of summons-in-chambers (encl. 17) for an order as per the declaration sought on the grounds that the defendant has no defence to this action and has not even filed his defence although its solicitors have applied to the plaintiff's solicitors for time to file defence. It is clear that when the plaintiff filed this application, she was not aware that the defendant has filed its defence on 28 April 1991.

To add more color to the whole matter, on 8 August 1991, the defendant filed an application by way of summons-in-chambers (encl. 19) for an order that, the civil suit and the said application by the plaintiff for the order as per the declaration sought, be struck-off on the grounds that the plaintiff has no cause of action and that the action was an abuse of process of the Court.

The hearing of both the applications were adjourned for several times at the request of both parties on the ground that the matter was pending settlement. However when the matter came up for hearing on 19 January 1995 both parties informed the Court that the matter could not be settled and that being so, they have both agreed that the whole action can be disposed and thus render the trial of the cause unnecessary, as allowed by O. 33, r. 5 of the Rules of the High Court, if the following issue is determined by the Court at the outset, *viz.*:

> Having considered the purported powers and contents of the Power of Attorney signed sealed and delivered by Ibrahim b. Abdul Karim, Abdul Hamid b. Busu and Shadan bin Mohd. Rahim appointing Hj. Hassan bin Hj Arshad as their attorney dated 11 April 1981 and registered in the High Court in Malaya at Muar on 4 May 1981 as Power of Attorney No. 320/81 and upon perusing s. 212 of the National Land Code 1965 It is Declared that the attorney appointed by the said Power of Attorney was not legally empowered to create legally binding charges under the National Land Code and consequently It is Declared that the purported charges Pres. 1391/83 Jilid 18 Folio 16 and dated 23 May 1983 created by the Attorney by virtue of these alleged powers in the Power of Attorney are null and void and of no effect.

Order 33, r. 5 reads:

> If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just.

Both parties also informed the Court that all the facts found in the statement of claim are not disputed with the exception of para. 19 which reads:

> The said Power of Attorney does not empower the deceased or anyone else on behalf of the deceased to create a legal charge against the various titles.

Thus basically the only point of dispute in this whole action is whether the deceased as attorney has power to charge the said lands. Since both parties have agreed that the matter can be disposed if this issue can be determined at the outset, and furthermore as I am of the same view, I instructed both Counsel to proceed on those lines. After all, O. 15, r. 16 of the Rules of the High Court provides:

> No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declaration of right whether or not consequential relief is or could be obtained.

Counsel for the plaintiff submitted that para. 2 of the power of attorney does not contain the power to charge but only a power to transfer and that being so, the interest of the defendant in the said land acquired by virtue of the charges created therein is not indefeasible as provided for under s. 340 of the National Land Code as it was acquired by means of an insufficient or void instrument since the deceased as attorney has no legal power to create charges in favour of the defendant.

His main line of argument centred around the interpretation which should be given to the words "To give, sign and execute a proper transfer or other formal assurance" found in cl. 2 of the power of attorney. He argued that a charge is not a "transfer" and that the words "other formal assurance" means an instrument or document to convey interest in the said lands which has the effect of divesting proprietary interest in the said lands. He argued that a charge does not divest proprietary interest.

He then argued that by virtue of the said cl. 2, the powers of the deceased is only restricted to transfer and not to charge the said lands. He contended that the power of attorney has been given for a limited purpose and hence should be strictly interpreted. He pointed out no reference is made to "loans or borrowings" in the said power of attorney. He contended that the deceased never had the legal power to create a charge in favour of the defendant and that a charge is not a transfer neither can a charge divest a proprietary interest. He then

submitted that to ascertain the extent of the authority granted by a power of attorney, the words of the document must be construed and that the donor's intentions are relevant only to the extent that they are expressed in the deed's terms.

The word "transfer" according to Jowitt's *Dictionary of English Law* (2nd Edn.) means:

> to convey; to make over to another; the document by which property, as shares in a public company, is made over by one person to another;
>
> In the law of property, a transfer is where a right passes from one person to another, either (1) by virtue of an act done by the transferor with that intention, as in the case of a conveyance or assignment by way of sale or gift, etc.; or (2) by operation of law, as in the case of forfeiture, bankruptcy, descent, or intestacy.

With regard to the word "assurance" the same dictionary states:

"Assure" and "assurance" are the old words for "convey" and "conveyance".

According to Osborn's *Concise Law Dictionary* (7th Edn.), the word "assurance" means:

> a surrender, conveyance, assignment or appointment under a power, of property.,

and the word "conveyance" means:

> a mode of transfer of property; the deed or instrument other than a will whereby an interest in property is assured by one person to another.

With regard to the word "charge", Jowitt's dictionary states as follows:

> "charge" as applied to property signifies that it is security for the payment of a debt or performance of an obligation. It is a general term, and therefore includes mortgages, liens, writs of execution, etc. ... Thus, if the owner of land agrees that it shall be security for a debt or obligation by himself or another person, that will charge the land; the principal effect of such a charge is to entitle the grantee to take proceedings to obtain a sale of the property charged.

Looking at the above, I am of the view that the power given in the said cl. 2 to the deceased, i.e., to "give, sign and execute a proper transfer or other formal assurance", do not at all include the power to "charge". Creation of a charge clearly cannot amount to a transfer of any portion of the chargor's interest in a piece of land. I tend to agree with Counsel for the plaintiff that the words "transfer" and "assurance" are only restricted to the transferring or conveying of the said lands or the rights in the said lands and nothing more. Nowhere is it expressly stated in the said power of attorney that the deceased can charge the said lands or even create third party charges over the said lands or use it as security for the payment of a debt or performance of an obligation. It is my finding that cl. 2 did not confer a general power of borrowing by using the said lands as security.

According to Osborn's *Concise Law Dictionary* (7th Edn.) a power of attorney is "a formal instrument by which one person empowers another to represent him, or act in his stead, for certain purposes; usually in the form of a deed poll, and attested by two witnesses". According to Judith E. Sihombing in her book entitled *"The National Land Code - A Commentary"* (at p. 293) a power of attorney is an instrument "where one person (the donor of the power) formally authorizes another (the donee of the power) to act as his agent; the donor effects an instrument (the power of attorney) to appoint the donee his attorney under power", and at the same page says: "The result of appointing the donee as attorney is to enable the donee to act for the donor generally or in a specified transaction or series of transactions".

Trevor Aldridge in his book *"Powers of Attorney"* (6th Edn.) at p. 15 says:

> To ascertain the extent of the authority granted by a power of attorney, the words must be construed. The donor's intentions are relevant only to the extent that they are expressed in the deed's terms. As with the interpretation of other documents, this is a matter of law rather than fact.

Thus, what acts a power of attorney authorises the attorney to do is a question of construction of the document.

In *Bryant, Powis and Bryant Ltd. v. La Banque du Peuple* [1893] AC 170, Lord Macnaghten said (at p. 177):

> Where an act purporting to be done under a power of attorney is challenged as being in excess of authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication.

Counsel for the plaintiff submitted that a power of attorney given for limited purposes has always been strictly interpreted by the Courts. I agree with him. A particular example of the Court's policy of construing powers of attorney restrictively is provided by powers to borrow on the donor's behalf. The Courts tend to lean against interpreting a clause as allowing the attorney to borrow and give security from the donor's property and if the donor wishes the attorney to have this power, it should be expressly stated. The case of *Jacobs v. Morris* [1902] 1 Ch 816 is a good example. In that case, the plaintiff carried on business as a tobacco merchant in Melbourne, Australia and he also had a London office. While absent in Australia, he appointed an agent at the London office under a power of attorney, authorizing the agent "for me and in my name, or in my said trading name, to purchase and to make and enter into, sign and execute any contract or agreement with any person, firm, company or companies for the purchase of any goods or merchandise in connection with the business carried on by me as aforesaid".

Without the plaintiff's knowledge, the agent purporting to act under the power of attorney, obtained a loan from the defendants, a firm of cigar merchants in London who had previously had frequent business dealings, including loan transactions, with the plaintiff. On applying for the loan the agent, who was well known to the defendants, represented that the power of attorney authorized him to borrow money and that the loan was required for the purposes of the plaintiff's business. The agent produced to the defendants the power of attorney but being satisfied with his assurances, they did not read it. On receiving the money, the agent handed to the defendants as security, bills of exchange for the amount accepted and the money was paid into the plaintiff's banking account in London. The agent, under the power of attorney, subsequently withdrew it and applied it to his own use.

In an action by the plaintiff against the defendants to restrain them from negotiating the bills upon the ground that they had been accepted without his authority, the Court held that upon the construction of the power of attorney, that it gave the agent power to purchase only, with such powers as were necessarily implied by the appointment of the agent as purchasing agent, and did not confer authority to borrow. At p. 827, Vaughan Williams LJ said:

> The first question is as to the construction of the power of attorney. Does it include a power to borrow money? It contains no express power to borrow.

In the case of *In re Dowson and Jenkins' Contract* [1904] 2 Ch 219, a power of attorney authorized the agent to sell any real or personal property then or thereafter belonging to the principal, and also to receive and give a discharge for any moneys then or thereafter owing to the principal by virtue of any security. The power of attorney contained a power "to sell any real or personal property now or hereafter belonging to me by public auction or by private contract, and subject to any conditions as to title or otherwise". The Court held that it did not authorize the agent to sell property held by the principal as mortgagee under the mortgagee's statutory power of sale.

Another case which illustrates the Court's policy of construing powers of attorney restrictively with regard to powers to borrow is *Subramania Pillay v. Sundarammal* [1968] 2 MLJ 116. In that case the question posed was whether the attorney had acted in excess of the power conferred on him by cl. 12 of the power of attorney which is as follows: "To charge any of my said lands and to borrow upon any security real or personal or by means of advances to be obtained on goods and merchandise and for that purpose to sign all necessary charges and other document". The plaintiff in that case lent a sum of money to the duly constituted attorney of the defendant and it was an unsecured loan. The Court dismissed the plaintiff's claim on the ground that the said cl. 12 of the power of attorney only gave the attorney power to borrow on the security of real or personal property and that since the loan in issue was an unsecured loan, the attorney had exceeded his power in borrowing without security.

In reply Counsel for the defendant referred to a book entitled *"Powers of Attorney in Australia and New Zealand"* by Berna Collier and Shannon Lindsay (published in 1992) wherein it was stated (at p. 48):

> It should be noted that the authority conferred by a power of attorney may be either extended or limited by other documents (such as letters containing instructions to the attorney), or by circumstances (such as a course of dealings).

Counsel then referred to the joint-venture agreement, a copy of which was exhibited in the plaintiff's affidavit, wherein it was stated that the deceased was desirous of developing the said lands into a housing estate on a joint-venture basis with the company. He also pointed out that cl. 11 of that joint-venture agreement provides that the company shall pay to Bank Bumiputra Malaysia Berhad (that is, the defendant) the sum of RM440,000 being redemption sum. He then argued that the deceased has ostensible or implied authority to charge and hence the power of attorney impliedly gave the deceased power to charge the said lands to achieve and complete the scheme under the said joint-venture agreement.

I cannot see how the above arguments can hold water neither can I see the relevance of the reference to cl. 11 of the said joint-venture agreement. The power of attorney was given to the deceased on 11 April 1981 whereas the joint-venture agreement between the deceased and the company was entered into on 13 September 1982. There is no evidence to show that the said three persons executed the power of attorney especially for the development of the said lands. There is also nothing in the power of attorney to provide that the deceased has the power to develop the said lands. The nearest clause implying a limited form of development but only as regards to buildings already existing on the said lands is cl. 5 of the said power of attorney and this clause merely gives power to the deceased:

> To enter into possession of all our lands and houses and other property, to give notices to quit, to increase the rents of any of our lands and houses, to take down, rebuild, alter, improve or repair all or any such houses or buildings as occasion may require and to do every other act and thing for the improvement of the same.

To me, the above clause merely gives incidental powers to the deceased to manage the existing buildings found on the said lands and to make the necessary repairs or improvements whenever necessary. This clause also do not at all imply that the deceased is granted power to charge the said lands for the purpose of developing it into a housing scheme. As stated by Vaughan Williams LJ in *In re Dowson and Jenkins Contract* (*supra*) (at page 223):

> Therefore we are thrown back on the very terms of the deed which supplies the deficiency in these words...

Thus, in the instant case, I find that the absence of any reference to the exercise of the power to charge the said lands is a deficiency which cannot be supplemented by claims of implied or ostensible authority. On the whole, I am of the view that if the said three persons wanted the deceased to have the power to charge the said lands, it should be expressly stated. Looking at the power of attorney, I am clearly of the opinion that it confers no such power. Whatever their intentions are, they are relevant only to the extent that are expressed in the terms stated in the power of attorney. I cannot accept the defendant's arguments that the deceased has an implied authority to charge the said lands because I cannot see how such act can be considered necessary or incidental to the express authority given to the deceased in clause 2 of the said power of attorney, that is, "to give, sign and execute a proper transfer or other formal assurance".

As stated earlier, the power of attorney is dated 11 April 1981 and the joint-venture agreement is dated 13 September 1982. It must be stressed that the joint-venture agreement (exhibit 'RBA-3') is between the deceased and the company. There is clearly no nexus between the power of attorney and the joint-venture agreement. The joint-venture agreement cannot retrospectively seek to endow an additional power on the deceased in September 1982 by a clause in the joint-venture agreement whereas the power of attorney was registered in the High Court in Muar on 4 May 1981.

Furthermore, the joint-venture agreement appears to be entered into by the deceased in his personal capacity as it does not describe him as the donee of the powers or that he acts on behalf of the several landowners as their attorney, neither does it recite the said power of attorney.

In clause 32 of the joint-venture agreement, the deceased purportedly agrees for the "proper performance" of the said agreement to permit the company to charge the said lands for the benefit of the company. The said power of attorney clearly does not authorise him to so agree and hence the company obviously cannot effect a valid and registrable charge unless they are proprietors or lawfully constituted attorneys. They were neither.

All powers of the donee have to found within the four corners of the power of attorney and nothing more can be permitted by another document with another party, i.e., the joint-venture agreement, which is totally extraneous to the power of attorney. The parties are different. If further or other powers are desired to be conferred a new power of attorney should have been created.

Counsel for the plaintiff also submitted that s. 212 of the National Land Code has been breached. In her statement of claim the plaintiff contends that the charges are illegal by virtue of the section since the said lands belong to several persons and hence no dealings can be effected. Section 212 of the Code reads:

> No instrument shall be capable of effecting dealings under this act with respect to more lands than one unless:
>
> (a) the dealings in question are all of the like nature, and all effected by the same person or body in favour of the same person or body; and
>
> (b) ...

Section 5 of the said code provides that "dealing" means "any transaction with respect to alienated land effected under the powers conferred by Division IV" and this would include charges (see s. 292). Section 210 of the code provides that a person acting under a valid power of attorney may execute an instrument effecting any dealing but this must be read together with s. 212 which does not allow such instrument to be registered if it is in respect of more lands than one unless the dealings in question are all of the like nature and are all effected by the same person in favour of the same person. In the instant case, the deceased purportedly charged the said lands for the benefit of the company i.e., the deceased sought to create third party charges and that, in my view, clearly contravened the said s. 212.

Upon the whole, the plaintiff is entitled to the declarations sought, namely, that the attorney (the deceased) was not legally empowered to create legally binding charges under the National Land Code and that the charges created by the attorney (the deceased) by virtue of these alleged powers in the power of attorney are null and void and of no effect.

I now invite the parties to make their submissions as to costs.